FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2570 OF 2006

Deepak Dattu Suryavanshi & ors.)..Applicants
Versus
State of Maharashtra)..Respondent

Mr.Uday P.Warunjikar for the applicants.

Ms.S.V.Gajare APP for the State.

Coram : R.S.Mohite,J

Date : 31.7.2006.

PC

1. Heard both sides. Rule. By consent, rule made returnable forthwith.

2. This is an application for grant of bail. The applicants were shown as accused in C.R.No.119/2006 registered by the Hadapsar police station, Pune, initially for an offence under Sections 399, 402, 307, 353, 332 of IPC read with section 3(25) of Arms Act and Section 37 (1) and 135 of Bombay Police Act. It appears that approval for addition of offence under MCOC Act was granted by the investigating officer on 19.6.2006 by the approving authority. Before this period, the applicants had been remanded to judicial custody and therefore, after addition of the offence under MCOC Act, application came to be made before the

Magistrate for grant of further police custody for investigation of the offence under the said Act. The said application for grant of police custody came to be decided by an order dated 27.6.2006 passed by the Judicial Magistrate First Class, Pune by which police custody was granted till 4.7.2006. It was contended that this order passed by the JMFC was not in accordance with law as police custody was granted for a period exceeding 90 days. The argument was that he could only grant police custody till 3.4.2006 and grant of police custody till 4.7.2006 made the detention of the applicants beyond 3.7.2006 as illegal thereby entitling the applicants to be released on bail.

3. The argument is without substance because it is seen that immediately on next day i.e. 28.6.2006 the investigating officer applied to the Special Court for grant of further time of 90 days for conducting investigation and on that application vide order dated 30.6.2006 the Special Judge passed an order granting 180 days additional period for investigation under MCOC Act. In my view, once such an order is obtained within legally permissible period of police custody granted earlier by the Magistrate, no right to obtain bail can accrue to the accused within the period as extended by the Special Judge acting under the proviso to Section 21(2) of the MCOC Act.

4. It may be stated here that on 30.6.2006 the present

applicants had also applied for grant of bail to the Special Court on the ground that the Magistrate had granted police custody beyond the period of 90 days. That application was rejected by the Special Court vide its order dated 4.7.2006 on the ground that when the application had been made by the applicants, no right to be released under Section 167 has been accrued. Advocate for the applicants stated that he is not challenging this order.

5. It is possible that the order of remand into police custody by the Magistrate was irregular in so far as police custody was extended under miscalculation beyond the 90 days period legally permissible. However as extension has been sought and had been granted immediately by the Special Court, in my view, no right accrues in favour of the applicants to be released on bail on the ground that their detention is illegal. Hence rule is discharged and the application stands disposed off accordingly.

(R.S.Mohite,J)